

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ANGELA MARTINEZ,

Plaintiff

vs.

No.

UNITED STATES OF AMERICA,

Defendant.

**COMPLAINT FOR MEDICAL NEGLIGENCE**

COMES NOW the Plaintiff, Angela Martinez, by and through her attorneys of record, Duhigg, Cronin, Spring & Berlin, P.A., and hereby complains of the Defendant, United States of America, as follows:

**INTRODUCTION**

1. At all times hereinafter mentioned, Plaintiff Angela Martinez is a resident of the State of New Mexico and a dependent for the purposes of receiving medical services provided by the United States Government through the Department of Defense.

2. Plaintiff Angela Martinez' allegations are based upon the premise that healthcare providers at the Kirtland Air Force Base Family Practice Clinic were medically negligent, thereby causing her harm. Upon information and belief, the Kirtland Air Force Base Family Practice Clinic is part of The Department of Defense and, therefore, the United States of America is the proper defendant in this case.

3. Jurisdiction of this Court in this action is pursuant to 28 U.S. Code § 2671 et seq., in that this is a tort action against the United States of America.

4. Plaintiff has met all statutory and procedural prerequisites to the filing of this lawsuit and, therefore, this Court has jurisdiction over the subject matter and parties to this action.

5. On or about May 5, 2003, Plaintiff Martinez received a prescription for Fosamax from the Defendant in an effort to maintain bone density. Plaintiff received her treatment from the Kirtland Air Force Base Family Practice Clinic at all times relevant.

6. Healthcare providers at the Kirtland Air Force Base Family Practice Clinic continued to prescribe Fosamax up through November 9, 2018.

7. As a result of being prescribed Fosamax for an extended period of time, rather than improving Plaintiff's bone density, it diminished.

8. On November 9, 2018, Plaintiff was walking in her home when she suffered atypical right femur fracture.

9. The atypical right femur fracture suffered on November 9, 2018, was a result of long-term bisphosphonate therapy. Fosamax is a bisphosphonate.

10. It has been known for a substantial period of time that long-term use of bisphosphonate can result in loss of bone density and atypical femoral fractures.

11. In diagnosing and treating a patient such as Angela Martinez, a reasonably well qualified healthcare provider is under the duty to possess and apply the knowledge and to use the skill and care ordinarily used by reasonably well-qualified providers practicing under similar circumstances, giving due consideration to the locality involved. A physician, healthcare providers or nurse practitioner who fails to do so, is negligent.

12. A reasonably well-qualified healthcare provider treating a patient such as Angela Martinez who was exercising the duty to possess and apply the knowledge and to use the skill and care ordinarily used by reasonably well-qualified healthcare providers practicing under similar circumstances, giving due consideration to the locality involved would discontinue the use of Fosamax to allow Plaintiff's bone density to increase.

13. Defendant's medical staff failed to timely discontinue the Fosamax and as a result, Plaintiff suffered the atypical femoral fracture on November 9, 2018.

14. The failure to timely discontinue the Fosamax constituted medical negligence on the part of the Kirtland Air Force Base Family Clinic's medical staff.

15. As a further result of the negligence of the aforementioned medical staff, Plaintiff suffered serious personal injuries requiring surgery, and further suffered physical limitations, disability, pain and was forced to incur medical expenses all to her detriment, such damages to be determined by the trial court.

16. Plaintiff is still experiencing difficulties resulting from her atypical fracture of the right femur and it is anticipated that these damages shall continue in the future.

17. Defendant United States of America is liable for all damages suffered by Plaintiff as a result of the continued prescription of Fosamax.

WHEREFORE, Plaintiff demands Judgment against Defendant United States of America for damages, including compensatory damages, costs of suit allowable by law, pre and post judgment interest allowable by law and such other relief as the Court deems appropriate.

By: /s/ David M. Berlin

David M. Berlin

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